

Informative Digest

Government Code section 11340.5(b) authorizes the Office of Administrative Law (OAL) to issue a determination as to whether a state agency rule is a "regulation" as defined in Government Code section 11342.600 that is subject to the rulemaking requirements of the Administrative Procedure Act (APA; Gov. Code sec. 11340 et seq.). Since 1986, OAL has issued over 200 determinations pursuant to regulations adopted by OAL for processing determination requests and issuing determinations. These regulations are located at title 1, California Code of Regulations (CCR), sections 121 – 128. These regulations establish definitions, the filing requirements for determination requests, the procedures for publishing a notice, submitting a public comment and an agency response, and for issuing a determination.

OAL has the authority to issue a determination pursuant to Government Code section 11340.5(b), however, the statute makes the issuance of a determination a discretionary function of OAL. (Gov. Code sec. 11340.5(b) "[OAL] *may* issue a determination.") In contrast, the regulations proposed for repeal (sections 121-128) implement Government Code section 11340.5(b) and establish the process that OAL is required to follow once it is notified, or learns on its own, of a state agency rule that has not complied with the procedures and requirements of the APA. Because of the recent reduction in OAL's budget and staff, OAL will no longer be able to perform the discretionary function of issuing determinations, in addition to its statutorily mandated duties, with the resources available. Thus, OAL is proposing to repeal title 1, CCR, sections 121-128, and Appendix A ("Request for Determination – Form 1013 (1/02)") -- the process that OAL is required to follow for accepting determination requests and issuing a determination.

Authority and Reference Citations

Government Code sections 11342.4 and 11340.5(b).

Fiscal Impact Statements

OAL has determined that this order of repeal will not impose a mandate on local agencies or school districts.

Cost or savings to any state agency: None. The repeal of the determination process regulations does not result in any costs or savings to OAL, but allows OAL, in light of the recent reductions in its budget, to better utilize its available resources pursuant to the statutory mandates imposed upon OAL.

Cost or savings to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: None

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: None